

Administering Agency: **Placer County Department of Public Works and Facilities**

Contract No. MA001011

Contract Description: **Professional Consulting Services for Wastewater, Water/Recycled Water and Landfill Systems**

MASTER SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of December 22, 2016, by and between the County of Placer ("County"), and SCS Engineers ("Consultant"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in Exhibit A and **RFQ No. 10562, Professional Consulting Services for Water Quality Monitoring and Regulatory Assistance, and Landfill Operations, Engineering and Landfill Gas Systems; Design, Construction, Quality Assurance, Monitoring, Maintenance, and Operation** and Consultant's response to said document. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. **Payment.** County shall pay Consultant for services rendered pursuant to this Agreement at the time and in the amount set forth in the applicable purchase order based on this agreement. The scope of work and specific costs will be expressly identified on the purchase order for each specific project. The payment specified on the purchase order shall be the only payment made to Consultant for services rendered pursuant for the specific engagement. Consultant shall submit all billings for said services to County in the manner specified in RFQ No. 10562.
3. **Facilities, Equipment and Other Materials, and Obligations of County.** Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.
4. **Exhibits.** All exhibits referred to herein will be attached hereto and by this reference incorporated herein.
5. **Time for Performance.** Time is of the essence. Failure of Consultant to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract.
6. **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent Contractor and shall not be an employee of the County. County shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement. County shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.
7. **Licenses, Permits, Etc.** Consultant represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all

times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

8. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
9. **Insurance.** Consultant shall file with County a Certificate of Insurance, with companies acceptable to County, with a Best's Rating of no less than A-:VII showing.
10. **Worker's Compensation and Employers Liability Insurance.** Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to Consultant's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the Consultant.

Consultant shall require all subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

11. **General Liability Insurance.**

- A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Consultant, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Contractual liability insuring the obligations assumed by Consultant in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If Consultant carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- ☐ One million dollars (\$1,000,000) each occurrence
- ☐ Two million dollars (\$2,000,000) aggregate

D. If Consultant carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

- ☐ One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- ☐ One million dollars (\$1,000,000) for Products Completed Operations
- ☐ Two million dollars (\$2,000,000) General Aggregate

(2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

Consultant shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

(1) The limits of liability shall not be less than:

- ☐ One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- ☐ One million dollars (\$1,000,000) aggregate for Products Completed Operations
- ☐ Two million dollars (\$2,000,000) General Aggregate

(2) The insurance coverage provided by Consultant shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability

policies, if approved by the County as noted above. In no cases shall the types of policies be different.

12. **Endorsements.** Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:
- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
 - B. "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
 - C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."
13. **Automobile Liability Insurance.** Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

14. **Professional Liability Insurance (Errors & Omissions).** Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence and two million dollars (\$2,000,000) aggregate.

If Consultant sub-contracts in support of Consultants work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the subcontractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

The insurance coverage provided by the consultant shall contain language providing coverage up to one (1) year following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

15. **Additional Requirements.**

Premium Payments - The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - The Consultant shall be responsible for all deductibles in all of the Consultant's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

Consultant's Obligations - Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - Consultant shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the Consultant to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

16. **Indemnity.** The Consultant hereby agrees to protect, defend, indemnify, and hold Placer County free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by Placer County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of Placer County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this contract or agreement to the extent that the above arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct (all whether by act, error and/or omission) of the Consultant. Consultant's obligation shall include the duty to defend Placer County as set forth in California Civil Code Sections 2778 and 2782.8. This provision is not intended to create any cause of action in favor of any third party against Consultant or Placer County or to enlarge in any way the Consultant's liability but is intended solely to provide for indemnification of Placer County from liability for damages or injuries to third persons or property arising from Consultant's performance pursuant to this contract or agreement.

As used above, the term Placer County means the County of Placer, its officers, agents, employees, and volunteers.

17. **Contractor Not Agent.** Except as County may specify in writing Consultant shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied pursuant to this Agreement to Bind County to any obligation whatsoever.
18. **Assignment Prohibited.** Consultant may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County.
19. **Personnel.**
 - A. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during

the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, including those members of the Project Team as explained below, Consultant shall remove any such person immediately upon receiving notice from County of the desire of County for removal of such person or persons.

- B. Notwithstanding the foregoing, if specific persons are designated as the "Project Team" in Exhibit A, Consultant agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or sub-consultants named in the Project Team by Consultant without the prior written consent of County shall be grounds for cancellation of the agreement by County, and payment shall be made pursuant to Section 15 (Termination) of this Agreement only for that work performed by Project Team members.

20. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

21. **Termination.**

- A. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Consultant. In the event County shall give notice of termination, Consultant shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:
- 1) Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, Photostatting, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
 - 2) County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.
 - 3) County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Agreement not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant.

The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

- B. Consultant may terminate its services under this Agreement upon thirty- (30) working days' advance written notice to the County.
22. **Non-Discrimination.** Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.
23. **Records.** Consultant shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to Consultant until County is satisfied that work of such value has been rendered pursuant to this agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.
24. **Ownership of Information.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of County, and Consultant agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Consultant harmless from any claim arising out of reuse of the information for other than this project.
25. **Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.
26. **Conflict of Interest.** Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, Consultant agrees that no such person will be employed in the performance of this agreement without immediately notifying the County.
27. **Entirety of Agreement.** This Agreement contains the entire agreement of County and Consultant with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.
28. **Alteration.** No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by all parties, except as expressly provided in Section 15, Termination.
29. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California. Each party waives any Federal court removal and/or original jurisdiction rights it may have.

30. **Notification.** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

COUNTY OF PLACER:

CONSULTANT:

Placer County Administrative Services SCS Engineers
Dept

Attn: Ben Bramer
2964 Richardson Drive
Auburn, CA 95603

Attn: Ambrose McCready
3117 Fite Circle, Suite 108
Sacramento, CA 95827

Phone: 530-889-4257
Email: bbramer@placer.ca.gov

Phone: 916-361-1297
Email: amccready@scsengineers.com

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

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Executed as of the day first above stated:

COUNTY OF PLACER

By: Brett M Wood Date: 12/22/16
Printed Name/Title: Brett M Wood / Purchasing mgr.

Approved As to Form – County Counsel:

By: Elise Nelson Date: 12/21/16

CONSULTANT Stearns, Conrad, and Schmidt, dba SCS Engineers

By: Ambrose A. McCready Date: 11/22/16

Name: Ambrose A. McCready, P.E.

* Title: Vice President

By: E. Wayne Pearce Date: 11/22/16

Name: E. Wayne Pearce, P.G.

* Title: Vice President

**If Consultant is a corporation, this agreement must be signed by two corporate officers; one of which must be the secretary of the corporation, and the other may be either the President or Vice President, unless an authenticated corporate resolution is attached delegating authority to a single officer to bind the corporation (California Corporations Code Sec. 313).*

THE FOLLOWING EXHIBITS WILL BE NEGOTIATED, BASED ON RFQ NO. 10562 AND SPECIFIC COUNTY PROJECTS.

Exhibits

- A. Scope of Services
- B. Payment for Services Rendered
- C. Facilities, Equipment and Other Obligations of County